HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 837 OF 2006

BETWEEN

Smt. Razia Begum & others

.....

Appellants

And

The Municipal Corporation of Warangal rep. by its Commissioner & another

.....Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri V.M.M. Chari

Counsel for Respondent No. 1 : Shri V. Durga Nageswara Rao

Counsel for Respondent No.2 : Shri C. Narender

Dated: 06-06-2006

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 20.10.2005 passed by the learned Single Judge, whereby he declined to entertain the appellants' prayer for issue of a writ of mandamus to compensate them in lieu of the alleged unauthorized digging of canal (nala) through their land.

The appellants claim to be the owners in possession of land measuring Ac.0.39 guntas comprised in Survey No.130 situated at Lashkar Singaram Village, Hanamkonda Revenue Mandal, Warangal District. They are said to have purchased the land from late K. Chandraiah. They filed writ petition under Article 226 of the Constitution by alleging that without acquiring their land, the respondents started digging the same for the purpose of extending the nala. They pleaded that the action of the respondents to dig up their land has resulted in violation of their fundamental rights guaranteed under Articles 14, 19, 21 and 300-A of the Constitution and, therefore, they are entitled to be compensated.

The learned Single Judge dismissed the writ petition of the appellants by observing that the rival pleadings give rise to a contentious issue of fact, which cannot be adjudicated by this Court under Article 226 of the Constitution.

Shri V.M.M. Chari, learned counsel for the appellants made strenuous efforts to persuade us to hold that the finding recorded by the learned Single Judge is erroneous, but we have not felt persuaded to agree with him. Rather, we are inclined to agree with the learned Single Judge that this is not a fit case for exercise of this Court's jurisdiction under Article 226 of the Constitution of India. There is a serious dispute between the parties on the issue of digging up of the appellants' land by the

respondents. While the appellants have pleaded that the respondents have unauthorisedly dug up their land, the later have denied the same. This dispute can appropriately be decided by a Civil Court before which the parties can lead oral as well as documentary evidence.

Hence, the appeal is dismissed. Needless to say that the appellants shall be free to avail remedy by filing civil suit.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

06.06.2006
ksld / svs